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Incoming
C/015/0025

From: "Christopher A. Jones" <caj@princeyeates.com>
To: "Steve Alder" <stevealder@utah.gov>
Date: 12/29/2008 4:12 PM
Subject: RE: Bear Canyon Mine Permit Transfer
Attachments: Letter to S. Alder re Permit Transfer.pdf

B

Steve,

Please see attached letter regarding the referenced matter. We are reviewing your letter and will get back to you asap regarding a proposal for continued operation of the mine.

Best,

Chris

From: Steve Alder [mailto:stevealder@utah.gov]
Sent: Monday, December 29, 2008 8:27 AM
To: Christopher A. Jones; sstrong@RQN.com; rwalker@wklawpc.com
Cc: Dana Dean; John Baza
Subject: Fwd: Bear Canyon Mine Permit Transfer

Chris, this letter was sent out last week. We are pressing for an end to this stalemate. I am still waiting for information from you on behalf of the trustee setting forth the basis for claiming the transfer to Hiawatha is void or voidable. It would also be helpful to get your proposal for continued operation of the mine either by Hiawatha or CWMining. We will abide the deadline set out in this letter and close the mine if bonding is not provided by January 8th.

steve

Steve Alder
Assistant Utah Attorney General
1596 West North Temple, #300
Salt Lake City, Utah 84116
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stevealder@utah.gov



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December 29, 2008

Steve Alder
Assistant Utah Attorney General
1596 West North Temple, #300
Salt Lake City, Utah 84116

Re: CW Mining – Bear Canyon Mine

Dear Steve:

I wanted to write to help clarify certain issues relative to the Bear Canyon Mine permit in light of the ongoing bankruptcy proceeding involving CW Mining Company as Debtor.

As you know, an involuntary bankruptcy petition was filed against CW Mining on January 8, 2008. In June of 2008, CW Mining entered into a Purchase and Sale Agreement with Hiawatha Coal Company, Inc. whereby CW Mining ostensibly agreed to sell all assets from the underground coal mining operation in Bear Canyon, Emery County, including, among various other things, all permits and approvals from governmental agencies. This "sale" closed on June 24, 2008. The bankruptcy petition was subsequently granted on November 13, 2008. In sum, CW Mining transferred all of its rights in and to the Bear Canyon Mine after the filing of the bankruptcy petition, but before the granting of same, without authorization of the Bankruptcy Court.

Section 303(f) of the U.S. Bankruptcy Code (11 U.S.C. § 303(f)) permitted CW Mining to sell its assets after the petition was filed, but before an order for relief was granted (the "Gap Period"). However, now that the petition has been granted, Section 549 of the Bankruptcy Code allows the bankruptcy trustee to avoid post-petition transfers of property of the estate made pursuant to Section 303(f) to the extent that the value given in exchange for such property took the form of "satisfaction or securing of a debt that arose before the commencement of the case." (11 U.S.C. § 549(b)). As you will note on

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Steve Alder
December 29, 2008
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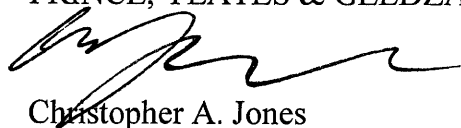
the attached "Closing Statement" for the CW Mining/Hiawatha transaction, the entire consideration "paid" by Hiawatha to CW Mining for the assets took the form of debt assumption or satisfaction. No cash or services were provided by Hiawatha in exchange for the assets. Thus, the transfer of CW Mining's assets, including any attempted transfer of its permits or rights thereunder, is an avoidable transfer under Section 549.

You should also be aware that we will be filing a complaint today against Hiawatha on behalf of the Bankruptcy Trustee seeking to avoid the transfer to Hiawatha and to recover all of the assets transferred pursuant to the June 2008 Purchase and Sale Agreement. I will forward you a copy of the complaint once it is finalized.

I will keep you apprised of further developments in the case as we proceed. Please feel free to contact me with any further questions or concerns.

Sincerely,

PRINCE, YEATES & GELDZAHLER



Christopher A. Jones

CLOSING STATEMENT

C. W. Mining Company, Seller

Hiawatha Coal Company, Inc., Buyer

Property: Assets from underground coal mining operation in Bear Canyon, Emery County, Utah

Sales Price

Seller

Buyer

\$13,860,634.00

14,075,007.69 E. Z. J.

Amounts assumed at closing:

Reclamation Bond Liability

\$2,211,089.00

Balance due Bank of Utah

1,832,749.89

Balance assumed World Enterprises

5,097,369.76

Balance assumed Security Funding

984,226.34

Balance assumed ABM

1,699,573.70

11,825,007.69

Amounts to be paid directly to creditors/employees, or

Additional amounts payable to World

Enterprises on or before thirty days after closing

2,250,000.00

Total amount paid or assumed by Buyer

\$14,075,007.69

Tax pro-ration: Buyer responsible for

any sales or other tax liability

resulting from sale and transfer

The undersigned hereby accept the above information as true and correct and hereby hold Carl E. Kingston harmless and free of any liability resulting from different information or amounts described herein which is later deemed incorrect.

C. W. Mining Company, Seller

Dated June 24th, 2008.

Charles E. Kingston
By

Hiawatha Coal Company, Inc., Buyer

Dated 6-24, 2008.

Elliot Finley
By

